

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-0450V

SANDRA MERCHANT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 12, 2023

Emily Beth Ashe, Anapol Weiss, Philadelphia, PA, for Petitioner.

Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On April 17, 2020 Sandra Merchant (formerly Gillingham) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"), alleging that she experienced Guillain Barré syndrome ("GBS") as a result of an influenza ("flu") vaccination administered on November 9, 2018. Petition, ECF No. 1. On October 7, 2022, I issued a decision awarding

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

damages to Petitioner, following briefing by the parties and a Motions Day hearing. ECF No. 64.

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$46,067.40 (representing \$45,596.50 for fees and \$470.90 for costs). Petitioner's Application for Attorneys' Fees and Costs ("Motion") filed May 26, 2023, ECF No. 70. In accordance with General Order No. 9, Petitioner represents that Petitioner incurred no out-of-pocket expenses. ECF No. 70-3.

Respondent reacted to the motion on June 2, 2023, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, 3 n.2, ECF No. 71. Petitioner did not file a reply thereafter.

I note this case required additional briefing regarding the issue of damages and participation in a Motions Day hearing. See *Joint Status Report*; filed Jun. 2, 2022, ECF No. 49 (reporting that the parties were unable to resolve damages); Petitioner's Brief in Support of Damages; filed Jul. 1, 2022, ECF No. 56; Petitioner's Reply Brief; filed Aug. 29, 2022, ECF No. 60; and Hearing Minute Entry, dated Oct. 7, 2022. Petitioner's counsel expended approximately 15.50 hours drafting the brief in support of damages and 2.70 hours drafting the reply brief. Attachment to Motion at 22-23. Although on the higher end of time expended preparing damages brief in the Vaccine Program, I find this amount of time to be reasonable, especially given that this case involved a GBS injury.

I have reviewed the billing records submitted with Petitioner's request. In my experience, the request appears reasonable, and I find no cause to reduce the requested hours or rates. Furthermore, Petitioner has provided supporting documentation for all claimed costs. ECF No. 70-2. Respondent offered no specific objection to the rates or amounts sought.

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney's fees and costs. I award a total of **\$46,067.40 (representing \$45,596.50 for fees and \$470.90 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, Emily B. Ashe.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this decision.³

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master